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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,697	01/05/2004	Peter C. Williams	22188/06732	1696

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EXAMINER

BOCHNA, DAVID

ART UNIT PAPER NUMBER

3679

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/707,697	Applicant(s) WILLIAMS ET AL.	
	Examiner David E. Bochna	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 is/are allowed.
- 6) ☒ Claim(s) 1,2,5-6,8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-2, 5-6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 1 recites the limitation "said front portion" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 5-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarz.

In regard to claim 1, Schwarz discloses a tube gripping ferrule (fig. 2) for a metal tube Fitting 12, the ferrule comprising:

a generally cylindrical interior wall through the center of the ferrule so that the ferrule can be installed over a metal tube end 18;

a front portion 50 of the ferrule indenting and biting into an outer surface of a metal

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tube end 18 when the fitting is assembled and pulled-up (see fig. 4); said ferrule being a unitary member before and after pull-up (this limitation is a product by process limitation as it defines the product in relation to the process it is being used in, therefore it carries little to no patentable weight in an apparatus claim. For example, the ferrule disclosed by Schwarz may undergo some “pull-up” and still be a unitary member),

the interior wall comprising first (cylinder wall of 72) and second 42 cylindrical portions, the first cylindrical portion being axially adjacent a front edge 50 of the ferrule and having the smallest interior wall diameter of the ferrule (see fig. 2), the second cylindrical portion extending to a back edge 48 of the ferrule; the second cylindrical portion having a larger diameter than the first cylindrical portion. Schwarz is silent as to whether the ferrule is case hardened or not, but as the ferrule is intended to bite into a metal tube surface it is obvious that the ferrule must have a higher hardness value than the tube. Similarly it would have been obvious to one of ordinary skill in the art to pick a case hardened material for the ferrules because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

In regard to claim 2, the back edge 48 of the ferrule is radially spaced from the tube end when the ferrule is assembled into and pulled-up in the fitting (see fig. 4).

In regard to claim 5, the ferrule comprises metal (see cross-hatching).

In regard to claim 6, it would have been obvious to use stainless steel because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

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In regard to claim 8, the front portion 50 hinges inwardly and collets the tube end upon pull-up of the fitting (see fig. 4).

Response to Arguments

6. Applicant's arguments with respect to claims 1-2, 5-6 and 8 have been considered but are not persuasive. Applicant argues that Schwarz does not disclose two different interior diameters. The Examiner disagrees. Looking at both figs. 2 and 3 of Schwarz and placing a straight edge along the interior surface of 72, it can be seen that the interior surface 42 is just slightly larger.

The Applicant's argument with respect to adding the "after pull-up" limitation is addressed in the prior art rejection section above.

Applicant argues that the statement that the sleeve has to be harder than the tube to bite into the tube provides no suggestion that the sleeve should be case hardened. There may or may not be a suggestion to case harden the ferrule, however, the fact that the ferrule bites into the tube gives motivation to case harden the sleeve so that it may be more suitable for the intended use.

Allowable Subject Matter

7. Claim 4 is allowed.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

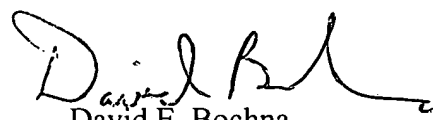
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (571) 272-7078. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David E. Bochna
Primary Examiner
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